The Clerk, Chair and Members of
Legislation No 3 Committee
The National Assembly for Wales
Cardiff Bay
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Consultation – Proposed Mental Health Measure

1. Introduction

The Police Federation of England & Wales (*The Federation*) welcomes the opportunity to provide advice to The Legislation No 3 Committee on the general principles of the proposed Mental Health (Wales) Measure.

It has been the policy of The Federation, since 1996, to have 'police stations' removed from the definition of a 'place of safety' and that if the Wales Measure is successful that such 'places of safety in Wales' (as opposed to those in England) should be those which are properly designed, and equipped, 'secure units' and not 'police cells'.

Within the scope of the proposed Measure, we believe that substantial progress can be made to benefit the rights and the care of mentally disordered persons who come into contact with the police.

The Federation welcomes the bold move by the 'Assembly' towards creating this much needy legislation if necessary, The Federation can be called forward to give additional advice and evidence to the Assembly, it committee and officials.

2. Background

The Police Federation was formed by an Act of Parliament and, in Wales, it represents over 7,600 police officers, or 98% of all uniformed and CID ranks from Constable to Chief Inspector. The Superintendents Association and Association of Chief Police Officers form the remaining 2%.

The Federation's membership comes from each of Wales' four police forces. It's staff – who are themselves, serving police officers – are elected to their respective roles.

The Federation was established to protect and promote the 'welfare & efficiency' of police officers and in its discharge of functions as laid down by statute.

The Police have a sworn duty of care to the public. They are essentially discharging their duty 'to protect life'. That is a principle which is, of course, also underwritten by other emergency services and, indeed, by the NHS itself.

3. Consultation questions

As requested in the consultation document The Federation make the following observations.

1. Is there a need for a proposed Measure to deliver the following aims:

a) providing local primary mental health services at an earlier stage for individuals who are experiencing mental health problems to reduce the risk of further decline in mental health, and in some cases, reduce the need for inpatient treatment and compulsory detention;

Yes. There is a need to provide local mental health services and for this to be delivered by suitably trained NHS professionals, and not in many cases delivered initially by the police who, having lay-contact with the mentally ill may well exacerbate a decline in a patients well being.

b) ensure that all individuals accepted into secondary mental health services in Wales have a dedicated care coordinator and receive a care and treatment plan, and that service users previously discharged from secondary mental health services have access to those services when they believe their mental health may be deteriorating;

No comment.

c) extending mental health advocacy provision beyond current arrangements?

Yes. This issue is the primary case for the evidence being submitted by The Police Federation.

2. How will the proposed Measure change existing arrangements, and what impact will such changes have?

Such changes will, for the first time in UK law, give safeguards in both a measured and a legal basis to the mentally ill who may come into police contact. If the recommendations of the Police Federation are implemented it will help to safeguard life, be cost effective and measured in terms of joined-up 'public service delivery' and provide a positive impact for the most vulnerable in society.

3. Are the sections of the proposed Measure appropriate in terms of achieving the stated aims?

Yes

4. Mental health prisoners & patients

Nye Bevan 1952: *"The collective principle asserts that no society can legitimately call itself civilized, if a sick person is denied medical aid because of the lack of means"*

Essentially, for the purposes of this Measure and the written advice that The Federation wish to give, we are not concerned with patients who have been sectioned under the Mental Health Act and are thereby confined to a place of safety with full medical support in either a specialist medical unit or hospital.

The Federation is primarily concerned with the use of officers when, as part of their core role, they are used as <u>a first-line-response</u> to a member of the public who comes to their notice and who may, or may not, be mentally disordered and, <u>thereafter, how they are dealt with and cared for by the NHS and the police.</u>

The Federation believe that it cannot be right, that a person who is 'mentally disordered' (howsoever defined) should be detained in a police cell. Custody suites in Wales are neither equipped - nor staffed - to deal with the specific needs of a mentally disordered person.

Police custody suites are designed as areas to hold prisoners who have allegedly committed criminal acts with a view to ensuring their security, to assist in gathering evidence and to facilitate the administration of justice at that early stage, whether through interviewing, charging or releasing. Such an environment is not conducive for the complex needs of dealing with mentally disordered persons.

It is an unfortunate fact that, all too often, those who die in police custody emanate from vulnerable groups, including, it must be said, the mentally disordered. Coroners and human rights groups are then forced to express their concerns retrospectively, with all agreeing that these vulnerable persons should never have been placed into a police cell.

The Federations stance on this matter is fully supported, and continues to be supported by mental health charities, The Association of Chief Police Officers, The Superintendents Association and importantly also, The Independent Police Complaints Commission.

However, despite this consensus of agreement, mentally disordered 'patients' are still brought into police custody and custody sergeants are then required to provide what basic-lay-care they can for these people with little training and few resources whilst they await an assessment by an appropriately qualified person.

If the detained person is thought to be suffering from the influences of alcohol or drugs, he/she will be detained in a police cell until 'sober' as these substances will affect the assessment process. That, of course, may take many hours, stretches police resources, places the staff within the custody suite under increased risk of legal jeopardy and, most importantly, places the detained person at a continued risk.

The proposed Measure, has for the first time anywhere in the UK, the scope and potential treat the mentally disordered as *patients*, and not *prisoners*.

5. Measure Objectives

It is the Federation's contention that the grey area of 'mental health patients' being brought initially into police custody/safety should not be considered in line with those being assessed for detention, or liable to be detained or liable to recall under the Mental Health Act 1983 (or any statutory modification or re-enactment thereof).

The interpretation of such 'mentally disordered persons' clearly includes persons who are suffering *any disorder* or *disability* of the mind. It is the Federation's view, therefore, that this is a human right and, as such, any person brought to the attention of the police who may/or may not be 'mentally disordered' should be given the same rights.

6. The custody-safety route

Currently, any person brought into a custody suite by a police officer, for either a crime or their own safety, has to satisfy basic criteria of law. This is to establish why they are to be held. Such criteria may include:

- Available evidence of wrong-doing
- The legal necessity for their detention
- The ultimate purpose of their detention (gathering further evidence, questioning/assessment etc)

Essentially the circumstances are considered by the Custody Sergeant as required by the Police and Criminal Evidence Act, 1984 (PACE) which was initiated to strengthen and formalise the rights of those detained in police custody and to provide suitable safeguards for their well-being. That Sergeant will also consider the further needs of the investigation as well as those of the prisoner.

PACE states that a person detained under sect 136 must be assessed *'as soon as possible'* by approved social worker and registered practitioner.

In reality they are normally seen by a police surgeon/doctor, or on-call sub-contracted doctor who carries out an assessment, then calls on the mental health services if they think there is an issue. It is unknown to what specialist extent police surgeons/doctors are trained to assess mental health.

If the prisoner is the subject of a criminal enquiry then, clearly, that 'crime' needs to be investigated. However, for those deemed (in lay terms) to be mentally ill, a doctor is called to asses that person.

There are no advisory guidelines or statutory 'timescales' for how long a 'prisoner' can be detained without them seeing – on first referral by the police – a doctor or any other qualified medical staff, such as a nurse. It is at this stage that those detained are at their most vulnerable.

The holding of a person in such a condition may last for many hours (The Independent Police Complaints Commission 2008 Report shows on average 8 – 10 hours) where 'patients' awaiting either the attendance of a doctor to carry out a basic assessment or for the 'prisoner' to be suitably free of any intoxicant to enable the assessment to take place. The timeliness of such an assessment may, of course, be further hampered by the need to obtain the services of a multi-language translator.

- Mental Health Act, Section 3.16 states that *"It is imperative that a mentally disordered or otherwise mentally vulnerable person, detained under the Mental Health Act 1983, section 136, be assessed as soon as possible. If that assessment is to take place at the police station, an approved social worker and a registered medical practitioner shall be called to the station as soon as possible in order to interview and examine the detainee. Once the detainee has been interviewed, examined and suitable arrangements made for their treatment or care, they can no longer be detained under section 136. A detainee must be immediately discharged from detention under section 136 if a registered medical practitioner, having examined them, concludes they are not mentally disordered within the meaning of the Act"*

It is a fact, that police resources are not equipped to deal with mentally disordered prisoners who may need care, as opposed to restraint. We have 'police cells' as opposed to 'secure units' and police officers or contracted civilian detention officers, as opposed to 'medically trained personnel'. Access to medically trained personnel is, of course, occasionally available but such prisoners could, currently, be taken to any custody suite in Wales with no guarantee of permanent or even ad hoc, medical staff being in attendance.

Similarly, in order to transport such persons – who are in legal terms now classified as 'prisoners' - for assessment to, say, a hospital, may require the use of police vehicles which have never been designed or adapted for such use and the journey distances may well cover many miles, hundreds in some cases, particularly in the rural areas of Wales.

Inevitably, the use of such transportation requires that at least two police officers will be taken from their normal core duties, to escort the person 'in safety' (a lay term). This could and, indeed, has been, entirely in vain where the staff at the hospital or psychiatric unit then refuse to assess the individual on the grounds of intoxication, or suspected intoxication. In such cases, the prisoner is returned to the custody suite and kept in detention until an assessment can be completed.

A large number of those subsequently assessed are then released with no further formal action being taken. This is often due to the fact that they <u>may</u> previously have used alcohol to excess, illicit or prescribed drugs or a combination of each or that they no longer appear to form a threat to either themselves or a member of the public.

In such cases, that person may be advised by the doctor to attend at a psychiatric clinic as a voluntary patient. The police will have no legal reason to detain this person further and they will then be released back into the public domain with at that stage no further police contact (this figure stands at about 83%) or importantly the person will have no support from the authorities, unless it is voluntarily sought. All too often, that person will, at some stage - and often very soon thereafter - come back to the attention of the police and, once again, be taken back into police custody and the process is repeated.

It must also be advised that where some 'voluntary agreements' exist, between Health Authorities and the Police, these have in the past assisted in dealing with some humanity with the mentally ill/disordered. However, The Federation firmly believe that *statutory protection* for the mentally ill is now more appropriate not only in terms off clarity in public service delivery terms, but to ensure clarity also in legal terms. The financial constraints both within the health service and the police service has made the up-keep of such 'voluntary arrangements' almost impossible to measure - or cost – and with no control, guides of best practice, or configured management possible.

As an illustrative point, and taking just one police force as an example, the smallest geographically of the Welsh forces, Gwent, in 2009, made 419 arrests under S136 of the Mental Health Act with the average time 'in custody/police care' as being 8 hours 53 minutes.

7. Death in custody/police contact

Whenever a person dies in either police custody, or following *any* police contact, no matter how brief, the Independent Police Complaints Commission (IPCC) have a statutory duty to investigate the circumstances.

This could result in the officers engaged within the custody suite, as well as those responsible for conveying the person there, or who have, or may have had contact, being placed under formal investigation where their every action, whether routine or otherwise, will be scrutinised with finite detail.

This process creates excessive stress and deep anxiety in officers, who are simply attempting to do a professional job in difficult circumstances and with very limited, or no other professional resources.

- Nick Hardwick, Chair Independent Police Complaints Commission (IPCC) – Address to Police Federation Conference 2005*:*

"….50% of the deaths in police custody were people with a mental health problem. Frankly I am much more interested in preventing these tragedies occurring than I am in investigating them afterwards. We are working with the health service, voluntary agencies, the Home Office and all parts of the police services to address this".

- Tom Davies, IPCC Wales Commissioner 2007:

"….Following a number of deaths or worrying incidents in Wales which seemingly had some common recurring issues I commissioned a review of all previous cases of death in custody/adverse incidents which had been referred to the IPCC. Unfortunately, the police often have to deal with some of the most vulnerable people in society and sometimes with tragic consequences. Deaths in police custody or following contact with the police have a devastating impact on the families of the deceased and on the police officers and staff who have dealt with those individuals. A police cell is often not the most appropriate place for somebody with health issues to be placed…."

- IPCC figures (2008/09): 49 people died in police custody.

- 3rd February 2010 The Independent Advisory Panel, part of the Ministerial Council on Deaths in Custody (Ministry of Justice) launched a new website. There are no figures avialble for deaths in police custody arising from those who are mentally ill. Reports by Ministry of Justice do not show how many people died in police custody who had, or who could have had mental instability.

8. Transportation

The transportation of mentally disordered persons creates its own problems. It may well be inappropriate to allow such a prisoner to be unaccompanied in the 'rear cage' of a police van, as may be the case for criminal prisoners, but, due to the uncertainty of the person's psychiatric condition, transporting the person even in the rear of a police car has inherent dangers.

It is by no means unusual for 'prisoners/patients' to attempt to escape, to attack the escorting officers or to interfere with the driver in a bid to force the vehicle to crash. In such circumstances, police restraint techniques will have to be used which may well differ from those used by psychiatric professionals and which may not be in the best interests of a person who requires medical care, as opposed to simple restraint.

Undoubtedly, cases exist where those suffering from a mental disorder have been released from police custody only to then harm themselves, or others within their own family, or wider public community. The Police have a duty of care to not only those they detain, but also to those that they interact with. It is therefore vital, that appropriate safeguards are put in place to allow them to do just that.

9. The four recommendations of the Police Federation

That within the scope of the proposed Measure:

a. That designated custody suites have the permanent attendance of a fully trained NHS nurse where officers in each police force can, if absolutely necessary, take a person for their own safety. This should be a requirement in each force *by statute.*

b. It is accepted that if a person is *arrested for a criminal offence* and there are concerns that there may be mental health issues and that a police surgeon attends to examine. However if a person is *arrested under section 136,* the assessment – *by statue* – should be carried out by the appropriate people in the appropriate place, being a hospital, special residential home or a secure unit and not a police cell.

c. That *statutory* limits are set which require a doctor, trained in assessments of mental health and a social worker to attend a designated custody suite. The Police Federation are seeking that this timescale should be within 1 hour of arrival.

d. That transportation of any person brought to the attention of the police and who is to be taken from a designated custody suite to a hospital or specialist unit, is to be transported by ambulance only and for *statutory time limits* to be set.

10. Disclosure

The Police Federation are happy to have this evidence posted in the public domain.

The recommendations in this document, form part of the policy of the Police Federation and can be viewed at www.polfed.org

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